

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Complete Detariffing for Competitive)
Access Providers and Competitive Local)
Exchange Carrier)

Access Charge Reform)

CC Docket No. 97-146

CC Docket No. 96-262

COMMENTS OF PRISM COMMUNICATION SERVICES, INC.

In response to the Commission's Public Notice¹, Prism Communication Services, Inc. ("Prism") hereby submits its Comments regarding mandatory detariffing of competitive local exchange carrier ("CLEC") interstate access services.

INTRODUCTION

On April 28, 2000, the Court of Appeals for the District of Columbia Circuit upheld the Commission's 1996 order requiring detariffing for interstate, domestic, interexchange services of nondominant interexchange carriers.² On May 1, 2000, the Court lifted a stay of the IXC Detariffing Order and the rules adopted in the Order became effective.³ In light of the Court's rulings, the Commission seeks comment regarding the mandatory detariffing of CLEC interstate access services. Among other things, the Commission seeks comments addressing how

¹ In the Matter of Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, *et. al.*, CC Docket No. 97-146 and 96-262, Public Notice, DA 00-1268 (rel. June 16, 2000) ("Public Notice").

² *MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) ("IXC Detariffing Order")

³ *MCI WorldCom v. FCC*, No. 96-1459, slip op. (D.C. Cir., May 1, 2000).

mandatory detariffing reduces the economic burden on non-ILECs of filing tariffs and reduces the administrative burden on the Commission of maintaining tariffs.⁴

As set forth more fully below, Prism believes that mandatory detariffing disturbs the fair and stable rules at the heart of the CLEC and interexchange carrier ("IXC") relationship. Under the current framework, both CLECs and IXCs utilize tariffs to their advantage. As a CLEC, Prism utilizes tariffs to establish legal relationships with all IXCs. Moreover, these relationships are based upon a uniform set of terms that the tariff grants legal weight to. IXCs are also very comfortable with this system. For example, in its opposition to mandatory detariffing, AT&T stated that "the customers of switched access services – the IXCs – have substantial experience operating in a tariffed environment, and have both the knowledge and means necessary to protect their interest when operating under either contracts or tariffs in a permissive regime."⁵ AT&T's opposition of mandatory detariffing is in-line with other IXCs, the primary customers of switched access.⁶ Prism submits that the Commission's detariffing order does not serve the public's interest because it will increase, and not lower, transaction costs, it will raise the number of disputes needing resolution with the Commission, and will create a legal advantage for ILECs.

Mandatory detariffing will force exorbitant transaction costs that will hinder Prism's ability to provide local exchange service.

Without the ability to file a simple, single tariff, Prism must negotiate an interstate access service contract with all IXCs. Unfortunately, Prism, like other CLECs, cannot establish exactly which IXCs' customers will utilize Prism's services. Although Prism might find some guidance by examining its customers' presubscribed IXCs, any certified IXC may wish to terminate a call on Prism's facilities. With no manner by which to tell the IXCs apart, Prism is forced to negotiate with each and every one. Prism runs the risk of investing time and money in creating an agreement with an IXC that may never need Prism's services. In addition to negotiating with

⁴ Public Notice at 2.

⁵ AT&T Reply Comments in CC Docket No. 97-146 at 9.

⁶ See comments of MCI, CompTel, and Sprint.

currently certified IXC, Prism must invest more time and money into monitoring the market for newly certified IXCs that might also use Prism's services. In the end, mandatory detariffing places CLECs in the very difficult position of risking time and money in negotiations and contracts -- a problem not associated with tariffs.

Not only will Prism's human and financial resources be stretched in the creation of these agreements; they will be stretched in the maintenance of these agreements as well. Tariffs allow CLECs to establish one set of consistent terms that apply to any IXC. However, with individual contracts, Prism must allocate a large amount of resources to ensuring that the terms of each agreement are appropriately met. Prism can better allocate these resources to building its facilities and bringing local connection to more consumers.

Mandatory detariffing will also increase the Commission's administrative costs and involvement in interstate access service matters.

If CLECs cannot file tariffs, the Commission's cost to oversee these tariffs will most certainly be reduced. However, the Commission will most likely incur equivalent, if not higher, costs as it becomes entangled in disputes between negotiating CLECs and IXCs. For example, it is likely that IXCs will continue to assert that CLEC access rates cannot be higher than ILEC access rates for a given area. Primary IXCs can and will use their significant leverage to attempt to force carriers into agreeing to rates that are below the carriers' actual costs. Similarly, IXCs may potentially refuse or terminate interconnection with CLECs if they determine a rate is unreasonable. Such potential conflicts will undoubtedly require arbitration by the Commission for resolution and therefore drive up the Commission's administrative costs.

Mandatory detariffing would grant ILECs a market advantage over CLECs.

Mandatory detariffing will also unfairly saddle CLECs with more legal obligations than ILECs. As noted earlier, under mandatory detariffing, CLECs must negotiate interstate access service agreements with every IXC and thus the potential for dispute is high. In contrast, ILECs can continue to enjoy the luxury of filing tariffs instead of negotiating directly with each IXC.

Moreover, ILECs benefit from the straightforward legal protection and avoidance of disputes that permissive tariffs provide.

In addition, CLECs will be forced to incur large transactions costs associated with negotiating and administering all of the access service agreements, which ILECs need not worry about. These added costs would ultimately hinder a CLEC's ability to actually reduce access rates. This result is especially troublesome in light of the fact that ILECs' per minute charges will be reduced due to the adoption of the CALLS proposal. In the end, CLECs would be required to accept rates below their actual costs in order to stay competitive.

Finally, ILECs would easily rollout new services by simply filing a new or amended tariff. On the contrary, CLECs would have to expend even more human and financial resources in negotiating new or amended contracts with each IXC. If they are not successful in amending every contract, carriers will have an inconsistent assortment of services for each IXC, creating an impossible and burdensome administrative task.

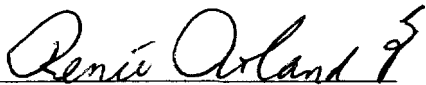
CONCLUSION

The mandatory detariffing of CLEC interstate access services is clearly not in the public's interest. Contrary to the Commission's intentions, mandatory detariffing will increase rather than lower CLECs' transaction costs. The Commission itself stands to incur administrative costs stemming from the resolution of disputes between negotiating CLECs and IXCs.

Mandatory detariffing will also give ILECs an unfair advantage in the marketplace. Overall, the end result will hinder, not enhance the ability of the consumer to have true choice in their local exchange carrier.

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.

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